

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
JOSE CASTRO,

Plaintiff,

-against-

**ANSWER OF DEFENDANTS  
CITY OF NEW YORK AND  
NEW YORK CITY POLICE  
DEPARTMENT**

THE CITY OF NEW YORK, NEW YORK CITY POLICE  
DEPARTMENT, POLICE OFFICER SGT. RODRIGUEZ,  
SH#2716, POLICE OFFICER JOHN DOE #1 AND  
POLICE OFFICER JOHN DOE #2

08 Civ 2916 (JSR)

**JURY TRIAL DEMANDED**

Defendants.  
----- X

Defendants the City of New York ("City") and New York City Police Department, by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, as and for an answer to plaintiff's Complaint ("Complaint"), respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the Complaint, except admit that plaintiff purports to invoke the jurisdiction of this Court as stated therein.
2. Deny the allegations set forth in paragraph "2" of the Complaint, except admit that plaintiff purports to invoke the jurisdiction of this Court as stated therein.
3. Deny the allegations set forth in paragraph "3" of the Complaint, except admit that plaintiff purports to lay venue as stated therein.
4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "4" of the Complaint.

5. Deny the allegations set forth in paragraph “5” of the Complaint, except admit that the City of New York is a municipal corporation organized under the laws of the State of New York.

6. Deny the allegations set forth in paragraph “6” of the Complaint, except admit that the City of New York is a municipal corporation organized under the laws of the State of New York and that it maintains the New York City Police Department and respectfully refer the Court to the New York City Charter and Administrative Code for the relationship between defendant City and the New York City Police Department.

7. Admit the allegations in paragraph “7” of the Complaint.

8. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraph “8” of the Complaint.

9. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraph “9” of the Complaint.

10. Admit that Rodriguez was employed by the City as a police officer, otherwise deny knowledge or information sufficient to form a belief with respect to the allegations in paragraph “10” of the Complaint.

11. Paragraph “11” of the Complaint contains legal conclusions to which no response is required.

12. Deny the allegations in paragraph “12” of the Complaint.

13. Deny the allegations in paragraph “13” of the Complaint.

14. Deny the allegations contained in paragraph “14” of the Complaint, except admit that plaintiff was released at the location.

15. In response to the allegations set forth in paragraph “15” of the Complaint, defendants repeat and reallege each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

16. Deny the allegations contained within paragraph “16” of the Complaint.

17. Deny the allegations contained within paragraph “17” of the Complaint.

18. Deny the allegations contained within paragraph “18” of the Complaint.

19. In response to the allegations set forth in paragraph “19” of the Complaint, defendants repeat and reallege each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

20. Deny the allegations contained within paragraph “20” of the Complaint.

21. Deny the allegations contained within paragraph “21” of the Complaint.

22. In response to the allegations set forth in paragraph “22” of the Complaint, defendants repeat and reallege each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

23. Deny the allegations contained within paragraph “23” of the Complaint.

24. Deny the allegations contained within paragraph “24” of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

25. The Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

26. Defendants City of New York and New York City Police Department have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have the

defendants City of New York and New York City Police Department violated any act of Congress for providing for the protection of civil rights.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

27. At all times relevant to the acts alleged in the Complaint, the duties and functions of the municipal defendant's officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendants City of New York and New York City Police Department are entitled to governmental immunity.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

28. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and was not the proximate result of any act of the defendant.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

29. There was probable cause for plaintiff's detention.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:**

30. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:**

31. Plaintiff has failed to comply with all conditions precedent to suit.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

32. The individual defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

33. At all times relevant to the acts alleged in the Complaint, defendants acted reasonably in the proper and lawful exercise of their discretion.

**WHEREFORE**, defendants City of New York and New York City Police Department request judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
May 13, 2008

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
*Attorney for Defendants City of New York and New  
York City Police Department*  
100 Church Street  
New York, New York 10007  
(212) 788-0786

By: /s/  
Michael K. Gertz

TO: David Segal, Esq. (By ECF)